IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO. 2370 OF 2002

1. Himmat C. Jani)
2. Poonamchand H. Jain)
3. Mithalal R. Jain)
4. Bhagwanlal C. Jain)
5. The Palghar Taluka Wholesale)
Grains Dealers Association ...).... Petitioners

versus

1. The Agricultural Market Produce)
Committee, Taluka Palghar)
2. Chandrakant D. Patil)
3. The State of Maharashtra)
4. The District Deputy Registrar,)
Co-operative Societies, Palghar)
5. The Assistant Registrar,)
Co-operative Societies,Palghar)... Respondents.

.....

Shri V.A.Gangal Sr. adv. with Shri Ulhas Naik for the petitioner.
Shri K.N. Kore for Respsondents 1 and 2.
Shri S.R. Nargolkar AGP for State - Respondents 3 to 5.

.....

CORAM ; V.G.PALSHIKAR &
SMT. NISHITA MHATRE, JJ.

DATED; 1ST FEBRUARY, 2005.

ORAL JUDGMENT ; (Per Palshikar, J.)

1. By this petition, the petitioners who are traders in agricultural produce within the Market Committee of the respondent no.1, have challenged the show cause notice issued by the A.P.M.C. to the petitioners, demanding from them payment of certain fees, which

according to the petitioners, they are not liable to pay.

2. The main contention raised in this petition is that the petitioners are licence holders on the basis of which they have a right to trade within the permission of A.P.M.C. The A.P.M.C. has levied certain fees for recovery of which the impugned notice is sent. This fees, according to the petitioners, is obviously the fees charged for services rendered like toilet block, shelter or covered varanthas for effecting sale etc. roads and other necessary facilities for human being. Consequence of this contention being that unless this is given, they cannot be compelled to pay fees mentioned in the show cause notice impugned in this petition as the principle of **quid pro quo** applies to this fees levied and demanded by the respondent.

3. This contention was stoutly denied and opposed by the learned advocate appearing on behalf of the A.P.M.C. and it was submitted that the petitioners having obtained the licence to trade in the premises of A.P.M.C. are bound to pay the fees levied by the Act or Rule thereunder and the fees covered by the impugned notice are not the fees which are compensatory in nature but are the fees which are regulatory in nature.

Reliance was placed by the learned counsel on the judgment of the Supreme Court of India reported in **(2002) 4 S.C.C. page 566**, where the Supreme Court of India has observed that the doctrine of quid pro quo applies only in cases where the fees levied are compensatory in nature and not regularoty in nature. The Maharashtra Agricultural Produce Marketing (Regulation) Act of 1963 itself is an enactment amended for regulatory marketing of agricultural produce and the contention therefore appears to be that the fees covered by the notice being regulatory in nature, doctrine of quid pro quo applied. However, in our opinion we need not go into this aspect and decide the question as to whether the fees covered by the notice are regulatory or compensatory in nature at this stage.

4. **Section 10(1) of the A.P.M.C. Act of 1963 reads as under:**

> *(1) For the purpose of settling disputes between buyers and sellers, or their agents, inmcluding any disputes regarding the quality or weight or payment of agricultural produce, or any matter in relation to the regulation of marketing of agricultural produce in the*

market area, the Market Committee of that area shall constitute a Committee.

5. From the provisions of section 10, it is obvious that the question as to whether the fees demanded by the notice are regulatory or compensatory in nature is the dispute, which is squarely covered by section 10(1), on being a matter in relation to the regulation f marketing, because the regulation of marketing includes levy of fees and whether it is applicable in this particular case or not is a dispute relating to a matter regarding regulation of marketing. In our opinion, therefore, there is effective alternate remedy available to the petitioner which they should pursue before approaching this court for exercising its jurisdiction under Article 226 of the Constitution of India.

6. We have yet another substantial reason for relegating the petitioner to the alternate remedy under section 10 of the Act. The rival contentions which required permission of section 10 are that the fees levied are regulatory in nature or compensatory in nature is liable to be decided by the machinery provided in that section. The section itself provide for further appeal. If we adjudicate upon this

question in our writ jurisdiction, the statutory alternate remedy available to the parties would be pre-empted by our decision and either of the parties who have agreieved by the decision of the Committee is therefore likely to loose. Effective alternate remedy, in our opinion, is a substantial reason for refusing to interfere under Article 226 of the Constitution. In the result therefore, this petition is disposed of directing the petitioner to approach the Agricultural Produce Marketing Committee - the respondent no.1 in this case under section 10 of the A.P.M.C. Act and raise their dispute regarding the nature of fees as to whether they are regulatory or compensatory. We make it clear that all contentions raised in this petition by the petitioner as also by the Committee shall remain open for adjudication before the Committee mentioned in section 10 of the Act. In our opinion, it would be the interest of justice if the dispute if so referred, under section 10 is decided within the period of six months from there. With these observations, the petition is disposed of.

*****